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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MAY 01 1998

ROBERT D. GIBSON, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____

**IN RE: PLAN FOR ACHIEVING PROMPT)
DISPOSITION OF CRIMINAL CASES) G.O. 98-2**

**GENERAL ORDER REGARDING THE PLAN FOR
ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES**

Pursuant to the requirements of Fed. R. Crim. P. 50(b), the Speedy Trial Act (18 U.S.C. §§ 3161-74), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the Judges of the United States District Court for the Western District of Oklahoma have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

(A) Applicability.

(1) **Offenses.** The time limits to follow are applicable to all criminal offenses triable in this Court, including cases triable by the United States Magistrate Judges, except for petty offenses as defined in 18 U.S.C. § 19. Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. (18 U.S.C. § 5031).

(2) **Persons.** The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

(B) Priorities in Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable as required by Fed. R. Crim. P. 50(a). The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in section (E) below, should be

given preference over other criminal cases. (18 U.S.C. § 3164(a)).

(C) Time Within Which an Indictment or Information Must be Filed.

(1) **Time Limits.** If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service. (18 U.S.C. § 3161(b)).

(2) **Grand Jury Not in Session.** If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the 30-day period prescribed in subsection (1), such period shall be extended an additional 30 days. (18 U.S.C. § 3161(b)).

(3) **Measurement of Time Periods.** If a person has not been arrested or served with a summons on a federal charge, an arrest will be deemed to have been made at such time as the person (a) is held in custody solely for the purpose of responding to a federal charge; (b) is delivered to the custody of a federal officer in connection with a federal charge; or (c) appears before a judicial officer in connection with a federal charge.

(4) Related Procedures.

(a) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(b) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

(D) Time Within Which Trial Must Commence.

(1) **Time Limits.** The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(a) The date on which an indictment or information is filed in this district;

(b) The date on which a sealed indictment or information is unsealed; or

(c) The date of the defendant's first appearance before a judicial officer of this district. (18 U.S.C. § 3161(c)(1)).

(2) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the Court may extend the period if unavailability of witness or other factors resulting from passage of time make trial within 70 days impracticable. The extended period shall not exceed 180 days. (18 U.S.C. § 3161(d)(2), (e)).

(3) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. (18 U.S.C. § 3161(i)).

(4) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(a) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. (18 U.S.C. § 3161(d)(1)).

(b) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information. (18 U.S.C. § 3161(h)(6)).

(c) If the original indictment or information was

dismissed on motion of the government before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge.¹ (18 U.S.C. § 3161(h)(6)).

(d) If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(5) **Measurement of Time Periods.** For the purposes of this section:

(a) If a defendant signs a written consent to be tried before a Magistrate Judge and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(b) In the event of a transfer to this district under Fed. R. Crim. P. 20, the indictment or information shall be deemed filed in this district when the original or certified copies of the papers in the proceeding are received by the Clerk.

(c) A trial in a jury case shall be deemed to commence

¹Under the rule of this section, if an indictment was dismissed on motion of the prosecutor on May 1, for example, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on June 1, the time remaining for trial would be 20 days from June 1. In this illustration, the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would not count. Although the 30-day arrest-to-indictment time limit set forth in section (C)(1) above, would apply to the new arrest as a formal matter, the short deadline for trial would in turn necessitate a short deadline for grand jury action.

at the beginning of voir dire.

(d) A trial in a nonjury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(6) Related Procedures.

(a) At the time of the defendant's earliest appearance, the Court will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Fed. R. Crim. P. 44.

(b) The Court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case shall be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. (18 U.S.C. § 3161(a)).

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of government or defense counsel will be grounds for a continuance or delayed setting only if approved by the Court and called to the Court's attention at the earliest practicable time.

(d) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the Court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(e) At the time of the filing of a complaint, indictment, or information described in section (D)(6)(d) above, government shall give written notice to the Court of that circumstance and state the government's position with respect to the computation of the time limits.

(f) Any pretrial hearing shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the Court's criminal docket.

(E) Defendants in Custody and High-Risk Defendants.

(1) **Time Limits.** Notwithstanding any longer time periods that may be permitted under sections (C) and (D) above, the following time limits shall also be applicable to defendants in custody and high-risk defendants as defined below:

(a) The trial of a defendant held in custody solely for the purpose of trial on a federal charge filed in this district shall commence within 90 days following the beginning of continuous custody.

(b) The trial of a high-risk defendant shall commence within 90 days of the designation as high risk. (18 U.S.C. § 3164(b)).

(2) **Definition of "High-Risk Defendant."** A high-risk defendant is one reasonably designated by the government as posing a danger to self, others, or the community.

(3) **Measurement of Time Periods.** For the purpose of this section:

(a) A defendant is deemed to be in detention awaiting trial when arrested on a federal charge or otherwise held for the purpose of responding to a federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis, excluding a detainer, for continuing to hold the defendant.²

(b) If a case is transferred pursuant to Fed. R. Crim. P. 20 and the defendant subsequently rejects disposition under that rule or the Court declines to accept the plea, a new period of

²If a defendant's presence has been obtained through the filing of a detainer with the state authorities, the Interstate Agreement on Detainers, 18 U.S.C., App. II, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356 n. 24 (1978).

continuous detention awaiting trial will begin at that time.

(c) A trial shall be deemed to commence as provided in sections (D)(5)(c) and (D)(5)(d), above.

(4) Related Procedures.

(a) If a defendant is being held in custody solely for the purpose of awaiting trial, the government shall advise the Court at the earliest practicable time of the date of the beginning of such custody.

(b) The government shall advise the Court at the earliest practicable time, usually at the hearing with respect to bail, if the defendant is considered to be high risk.

(c) If the Court finds that the filing of a "high risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the Court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and defendant's counsel but shall not be made known to other persons without the permission of the Court.

(F) Exclusion of Time From Computations.

(1) **Applicability.** In computing any time limit under sections (C), (D), or (E) above, the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such period of delay shall not be excluded in computing the minimum period for commencement of trial under section (G).

(2) **Records of Excludable Time.** The Clerk shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the government.

(3) Stipulations.

(a) The attorney for the government and the attorney for the defendant may at any time enter into stipulations

with respect to the accuracy of the docket entries recording excludable time.

(b) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a co-defendant for the limited purpose of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(c) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the Court.

(4) Pre-Indictment Procedures.

(a) In the event that the government anticipates that an indictment or information will not be filed within the time limit set forth in section (C) above, the government may file a written motion with the Court for a determination of excludable time. In the event that the government seeks a continuance under 18 U.S.C. § 3161(h)(8), the government shall file a written motion with the Court requesting such a continuance.

(b) The motion of the government shall state: (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(c) The Court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event, such as recovery from illness, not within the control of the government. If the continuance is not to a date certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that

justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(5) Post-Indictment Procedures.

(a) At each appearance of counsel before the Court, counsel shall examine the Clerk's records of excludable time for completeness and accuracy and shall bring to the Court's immediate attention any claim that the Clerk's record is in any way incorrect.

(b) In the event that the Court continues a trial beyond the time limit set forth in sections (D) or (E) above, the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h).

(c) If it is determined that a continuance is justified, the Court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. § 3161(h)(8), the Court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is not to a date certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(G) Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed, or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro

se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to section (D)(4) above, the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. The Court will attempt to schedule trials so as to permit defense counsel adequate preparation time in consideration of all the circumstances. (18 U.S.C. § 3161(c)(2)).

(H) Related Procedures.

If the defendant and defendant's counsel consent, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

(I) Juvenile Proceedings.

(1) **Time Within Which Trial Must Commence.** An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

(2) **Time of Dispositional Hearing.** If a juvenile is an adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(a) and (c).

(J) Sanctions.

(1) **Dismissal or Release from Custody.** Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges or to release from pretrial custody. Nothing in this Plan shall be construed to require that a case be dismissed or a defendant released from custody under circumstances in which such action would not be

required by 18 U.S.C. §§ 3162 and 3164.

(2) **High-Risk Defendants.** A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have the release conditions automatically reviewed. A high-risk defendant who is found by the Court to have intentionally delayed the trial shall be subject to an order of the Court modifying the nonfinancial conditions of release under 18 U.S.C. §§ 3141-56, to ensure appearance at trial as required. (18 U.S.C. § 3164(c)).

(3) **Discipline of Attorneys.** The Court may punish counsel as provided in 18 U.S.C. § 3162(b) & (c) in a case in which counsel:

(a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial,

(b) files a motion solely for the purpose of delay that counsel knows is frivolous,

(c) makes a statement for the purpose of obtaining a continuance that counsel knows to be false and which is material to the granting of the continuance, or

(d) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161.

(4) **Alleged Juvenile Delinquents.** An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 shall be entitled to dismissal of the case pursuant to that section unless the government shows that the delay was consented to or caused by the juvenile or counsel of the juvenile, or would be in the interest of justice in the particular case.

(K) **Persons Serving Terms of Imprisonment.**

If the government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, the government shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. § 3161(j).